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Supreme Court, U.S.
FILED
FEB 22 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1256

IN THE

Supreme Court of the United States

October Term, 1988

BENNY PELLIGRA,
Petitioner,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO
FOR THE NINTH APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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February 21, 1989

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I.

QUESTION PRESENTED

Whether the state appellate court correctly construed 29 U.S.C. §1144(a) when it held Petitioner's common law causes of action to be subject to and preempted by ERISA.

II.

28.1 STATEMENT

NAME OF EACH SUBSIDIARY OR AFFILIATE OF THE GOODYEAR TIRE & RUBBER COMPANY WHICH IS NOT WHOLLY-OWNED

Brad Ragan, Inc (North Carolina)
Hayes Construction Tire Service Inc
Sams Tire Company (Washington)
Goodyear Canada Inc (Canada)
Ascotan S.A. (Chile)
Goodyear India Limited
Goodyear Jamaica Limited
Goodyear Lastikleri Turk Anonim Sirketi
Goodyear Malaysia Berhad
Goodyear Marco, S.A.
Goodyear Taiwan Limited
Goodyear (Thailand) Limited
P.T. Goodyear Indonesia
The Goodyear Tire & Rubber Company of the Philippines
South Pacific Tyre Australia
South Pacific Tyre New Zealand
Gran Industria de Neumaticos Centroamericana, S.A. (Guatemala)
Nippon Goodyear (Japan)
Formosan Industria Rubber Products

Mindinao Rubber Company Inc (Philippines)
Zamboanga Rubber Company (Philippines)
Anlagenyerwaltungagesel/Shaft Deutsche (Germany)
Good Import S.A. (Morocco)

Notes:

(1) The Goodyear Tire & Rubber Company has no parent or controlling shareholder(s).

(2) For the purposes of this list, joint venture companies where Goodyear exercises some management control have been included, even though Goodyear does not own more than 50% of the voting stock.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In late 1984, Goodyear management concluded that there were too many employees on the Goodyear payroll. When it became apparent that a large number of salaried workers would have to be involuntarily terminated, it was unofficially suggested that preliminary research be

conducted to determine the feasibility of a voluntary Separation Program. Such a program, it was hoped, if adopted by management, would have the effect of securing the voluntary resignation and/or retirement of enough Goodyear employees that involuntary layoffs/terminations would be rendered unnecessary.

Terry Deems, Manager of Compensation, Benefits & Personnel Policy, was approached in December of 1984 by his boss on this subject. Mr. Deems was asked to compile data and to research various options which might be presented to Goodyear management. Over the next several months, plans were studied, costs were estimated, projections were made and recommendations were offered about potential programs. The necessary information was gathered by Terry Deems and he ultimately arranged and submitted three separate options for consideration by Goodyear management.

Although Mr. Deems had compiled the data and prepared the various programs that management considered, the decisions as to whether there would be a program and the form the program would actually take was entirely a function of Goodyear's upper management and was completely beyond Mr. Deems' assignment and authority.

Benny Pelligra, an employee of the International division, had returned to Akron from an assignment in Australia on Sunday, May 12, 1985. May 13, 1985 was his first day back in the Akron offices. Upon returning to Akron, Mr. Pelligra heard rumors circulating that Goodyear was about to offer some type of "retirement compensation." On either Tuesday, May 14, 1985, or Wednesday, May 15, 1985, Mr. Pelligra phoned Terry Deems. According to Mr. Deems, the phone call focused on the numerous rumors circulating throughout the

company. He acknowledged to Pelligra that he heard the same rumors. In response to a question as to whether Goodyear was going to actually do something, he replied that as far as he knew nothing had been officially approved.

On May 16, 1985, a day or two after the phone call, Pelligra went to the Goodyear personnel office and signed his application for his pension. One day later, Tom Barrett, President and Chief Executive Officer of The Goodyear Tire & Rubber Company, announced that a voluntary "Special Separation Program" was being offered to certain employees, first in the Finance Division and then, if approved by officers of the other divisions of the Company, in those divisions. On June 21, it was announced that the voluntary program would be offered to certain Goodyear International Division personnel. Employees who had applied for retirement pensions prior to the date on which the plan was offered were ineligible to participate in the program. Because Mr. Pelligra applied for his pension on May 16, 1985, he was ineligible.

Pelligra filed an action in the Court of Common Pleas of Summit County, Ohio against The Goodyear Tire & Rubber Company and Goodyear International Corporation, in January of 1986. He alleged breach of contract, negligent misrepresentation and fraud.

In December of 1986, Defendants moved for summary judgment raising preemption of all state law causes of action by virtue of ERISA. The Court overruled Goodyear's motion on January 8, 1987.

Goodyear later refiled its Motion for Summary Judgment and asked the Court to reconsider its earlier Order in light of this Court's decisions in *Pilot Life v. Dedeaux*, _____ U.S. _____, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987) and *Metropolitan Life v. Taylor*, 55 U.S.L.W. 4468 (April 6, 1987). The Court again overruled Defendants' Motion for Summary Judgment.

On December 7, 1987 this matter proceeded to jury trial on the common law theories of breach of contract, negligent misrepresentation and fraud. The trial court dismissed the claim of breach of contract at the close of all the evidence. The jury returned (6-2) a verdict in favor of the Petitioner in the amount of $57,500.00. In response to a specific interrogatory, the jury found (8-0) that there had been no fraud on the part of Goodyear.

Goodyear filed its notice of appeal. On June 29, 1988, the Court of Appeals, Ninth Judicial District, determined the Plaintiff's state law causes of action were preempted by ERISA and, on that basis, reversed the judgment of the trial court. Plaintiff then sought review of the Appellate Court decision by the State Supreme Court. The Ohio Supreme Court, upon consideration of the parties' memoranda, refused to exercise its jurisdiction and declined to review the Appellate Court's decision.

SUMMARY OF THE ARGUMENT

The state appellate court was correct in determining that Goodyear's voluntary Separation Program was governed by the provisions of ERISA, 29 U.S.C. §1144(a). As Petitioner's common law causes of action for breach of contract, negligent misrepresentation and fraud were "related to" the program, the state court was correct in finding those causes of action to be preempted by ERISA.

This Court's decision in *Pilot Life v. Dedeaux*, _____ U.S. _____, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987) confirmed the expansive sweep of the statute and subsequent cases interpreting *Pilot Life* fully support the state court's interpretation in this matter. Petitioner's reliance upon this Court's decision in *Ft. Halifax Packing Company, Inc. v. Coyne, Director of the Bureau of Labor Standards of Maine*, _____ U.S. _____, 107 S. Ct. 2211, 96 L. Ed. 2d 1 (1987) is misplaced in that the Goodyear plan involved indicia of administrative responsibilities absent in *Ft. Halifax, supra.*

Because Respondent Goodyear has established a bona fide employee benefit plan, the state appellate court properly found all state law claims related to it to be preempted. As this case presents nothing more than rudimentary principles of preemption which have been previously settled by this Court, and because the decision of the Ninth Appellate Judicial District only upholds the integrity of ERISA, review on *certiorari* is unwarranted.

REASON WHY THE PETITION SHOULD BE DENIED

THE STATE COURT CORRECTLY DECIDED THAT PETITIONER'S COMMON LAW CAUSES OF ACTION WERE SUBJECT TO AND PREEMPTED BY ERISA.

The state appellate court correctly construed the preemption provision of 29 U.S.C. §1144(a) to apply to Goodyear's voluntary Special Separation Program and accordingly found the common law causes of action "related to" the program to be preempted by ERISA. "Employee benefit plan" is defined by the statute as either an "employee welfare plan" or an "employee pension plan." 29 U.S.C. §1002(3). Notwithstanding Petitioner's contentions to the contrary, severance benefit plans such as the voluntary Separation Program in question have been recognized as employee welfare benefit plans within the meaning of ERISA, 29 U.S.C. §1002(1). *See, Holland v. Burlington Industries,* 772 F.2d 140 (4th Cir. 1985), *aff'd* 91 L. Ed. 2d 559 (1986); *Gilbert v. Burlington Industries,* 765 F.2d 320 (2d Cir. 1985), *aff'd* 91 L. Ed. 2d 558 (1986); *Blakeman v. Mead Containers,* 779 F.2d 116 (6th Cir. 1985). Because Goodyear's program falls within the parameters of an "employee benefit plan," ERISA preempts all state law claims "related to" it.

This Court has settled any doubt about the breadth of ERISA preemption in its decision in *Pilot Life v. Dedeaux,* _____ U.S. _____, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987). In *Pilot Life,* the plaintiff's suit against his former employer's insurance company contained the state causes of action of tortious breach of contract, breach of fiduciary duty and fraud in the inducement (not unlike those alleged by the Petitioner herein). Like the Petitioner, Dedeaux did not assert any of the causes

of action provided by ERISA. This Court examined the legislative history of ERISA and found that Congress intended the remedies set forth in Section 502(a) of the Act to be the exclusive civil enforcement scheme for claims for benefits under an employee benefit plan. The Court concluded that the preemption clause found at Section 514(a) of the Act has an expansive sweep and that the remedies set forth in Section 502(a) are exclusive. Thus, the Court held that *any* state law cause of action which "relates to" an employee benefit plan falls under Section 514(a) and is preempted.

Petitioner cites *Ft. Halifax, supra,* in support of his position that the Goodyear program in which he desired to participate is not a "plan" within the meaning of the federal statute. However, the program adopted by Goodyear in May of 1985 was more than the statutory edict which had been the subject of the *Ft. Halifax* decision. After significant planning and due consideration to all of the relevant data, Goodyear made the decision to offer a plan in hopes of avoiding massive involuntary layoffs. The testimony of Mr. Deems regarding the compilation of data and the research which was involved in the preparation and submission of his reports to management was uncontroverted. The plan was not offered to all Goodyear divisions, or departments, or job classifications. Goodyear exercised discretion in terms of which divisions, departments and job classifications were entitled to participate in the plan. Employees were free to opt for, or against, participation. Even after an employee opted to participate, there was no guarantee that his offer to participate would be accepted. The record below clearly established the administrative activity which attended the plan. The facts also clearly distinguish the case *sub judice* from *Ft. Halifax, supra,* where, by force of state statute, employees were automatically eligible to receive

one week's severance pay from any employer who relocated or terminated an employment facility. Goodyear, on the other hand, retained the administrative responsibilities this Court found to be indicative of an employee benefit plan:

> These statements reflect recognition of the administrative realities of employee benefit plans. An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as determining the eligibility of claimants, calculating benefit levels, making disbursements, monitoring the availability of funds for benefit payments, and keeping appropriate records in order to comply with applicable reporting requirements.

Ft. Halifax, supra at 55 L.W. p. 4701.

Unlike *Ft. Halifax*, Goodyear first had to determine what form the plan would take and what the benefits would be. This was a discretionary process which involved top management's best business judgment given the data that was prepared and submitted by middle management. Once having decided that there would be a plan and the form the plan would take, Goodyear had to determine the individual eligibility of each applicant and each applicant's benefit had to be calculated based upon his yearly salary.

Petitioner stresses the "single payment" aspect of Goodyear's retirement incentive plan and reads this Court's holding in *Ft. Halifax* to be more restrictive than Respondent believes the Court intended. Admittedly, Goodyear's payment of benefits was to be made in a lump sum, so that systematic payments were not anticipated. In *Ft. Halifax*, however, this Court, did not hold any scheme calling for a single payment to be outside the preemptive scope of ERISA. Nor does this purely quantitative argument which is advanced by

Petitioner find support in the federal court decisions which have considered the question since *Ft. Halifax* was announced. In *Schwartz v. Newsweek*, 827 F.2d 879 (2d Cir. 1987), employees at *Inside Sports* (a monthly magazine begun by Newsweek) heard rumors of financial difficulties of the publication and learned that Newsweek was attempting to sell *Inside Sports* to Active Market, Inc. Employees of *Inside Sports* were invited to apply for employment with Active Markets. The proposed severance arrangements were as follows:

> Those accepting employment with Active Markets would not be eligible for severance pay from Newsweek, unless their employment with Active Markets terminated within three months of their hiring date. Employees who did not wish to join Active Markets and who also failed to obtain other suitable positions at Newsweek would be terminated and given severance pay.

Schwartz, supra at pp. 880-881.

The three employees who opted to work for Active Markets left Newsweek without receiving severance pay. After nine months in their new positions at Active Markets, production of *Inside Sports* was halted and Active Markets declared bankruptcy. The employees were terminated with two weeks severance pay from Active Markets. Thereafter the employees demanded severance pay from Newsweek. When Newsweek denied their request, they sued in U.S. District Court in the Southern District of New York claiming alternatively ERISA violations and various state common law theories.[1] Newsweek's motion for summary judgment

[1] Petitioner has asserted in his petition at p. 15 that the state court's decision leaves him without a remedy. Respondent would point out that Pelligra had ample opportunity up to, and including, trial of this matter to amend his complaint to include an alternative claim under ERISA as did the plaintiffs in *Schwartz*. For reasons known only to him, Petitioner refused to do so.

was granted in its entirety by the district court. The employees pursued only the ERISA claim on appeal. The Second Circuit found the unfunded severance pay policy, which the parties agreed constituted an "employee welfare benefit plan" within the meaning of ERISA, to not have been arbitrary or capricious. See also *Northern Group Service v. Auto Owners Ins. Co.*, 833 F.2d 85, 89 (6th Cir. 1987) in which the Sixth Circuit distinguished *Ft. Halifax* and found Michigan state law to "relate to" an established benefit plan.

Clearly *Ft. Halifax* was concerned with a situation where there was no plan structured by an employer and no discretion on the part of the employer as to which employees should participate in benefits. The instant case is distinguishable on these important respects.

Considering the importance of the statutory scheme and ERISA's overall objective, it appears illogical that the question of whether a plan is governed by ERISA should rest on a purely quantitative basis, i.e., whether the benefit is paid in a single, lump sum or in multiple payments over a period of time. Such a result minimizes the uniformity which ERISA seeks to establish for both employees and employers. Moreover, such a distinction, based upon mere number, puts employers and the courts in the position of having to determine when an administrative scheme is truly "ongoing". In other words, had Goodyear elected to pay the special separation benefits in *two* equal installments six months apart, would this same scheme under Petitioner's rationale then be deemed a "plan" within the meaning of ERISA? Certainly, the Supreme Court's decision in *Ft. Halifax* neither supports this proposition nor intends this result.

CONCLUSION

It is respectfully submitted that the voluntary Separation Program offered by Goodyear in 1985 is an "employee benefit plan" within the meaning of ERISA and that, therefore, ERISA preempts all state law claims. Thus, the state appellate court quite properly construed 29 U.S.C. §1144(a).

Goodyear readily concedes that matters touching upon employee benefit plans are of great interest and concern not only to employers and employees in the State of Ohio but to employers and employees throughout the United States. It is, in fact, this great interest that prompted the Congress of the United States to enact the legislation known as ERISA. Nevertheless, this particular controversy hardly merits the attention of this Court. Most recently in *Pilot Life, supra*, this Court addressed itself to the issue of preemption. The principles enunciated there are clearly applicable to this case and have been universally applied by federal courts. Further, federal court cases decided since *Ft. Halifax* indicate that this case was correctly decided by the state appellate court. There is nothing about the facts or the history of this case that mandates a review or revision of the principles that have been established by the Supreme Court of the United States, the Supreme Court of Ohio, and lower federal courts. Moreover, this State Appellate decision neither carves exceptions from this Court's prior rulings nor imposes limitations upon those rulings. Rather the decision of the Ninth Appellate Judicial District upholds the integrity of ERISA and underscores the uniformity which is at the core of the ERISA statute and this Court's prior decisions.

Plaintiff argues that if the state appellate court's decision is allowed to stand, he is left without a remedy. This argument, while having a certain populist appeal, lacks an intellectual foundation. Plaintiff had every opportunity to pursue the remedies provided under ERISA. He was well aware of all of the motions that were made by Goodyear in which Goodyear urged the Court to limit the Plaintiff's remedy to that provided by ERISA. Yet, Plaintiff, at all times, consciously eschewed the opportunity to amend his Complaint to seek, in the alternative, remedies provided by ERISA. Plaintiff voluntarily decided that he would not, because he could not, attempt to prove that Goodyear had acted arbitrarily and capriciously in refusing to allow him to participate in the voluntary Separation Program.

In sum, this case involves nothing more than rudimentary principles of preemption that have been recently examined by this Court. There is, therefore, no need for this Court to review this case on *certiorari*.

Respectfully submitted,

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